

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

DAVID YORK,

Plaintiff,

VS.

UNKNOWN NAMED AGENTS OF THE
FEDERAL BUREAU OF
INVESTIGATION, *et al*,

Defendants.

§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 2:14-CV-00033

**ORDER ADOPTING MEMORANDUM AND
RECOMMENDATION TO DISMISS CASE**

Pending before the Court is Plaintiff's "Complaint for Injunctive Relief, Declaratory Relief, and Relief" (D.E. 1). On February 10, 2014, United States Magistrate Judge Jason B. Libby issued his Memorandum and Recommendation to Dismiss Case (D.E. 10), recommending that Plaintiff's complaint be dismissed with prejudice as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B) and that all pending motions be denied. Plaintiff timely filed his Objections (D.E. 12) on February 24, 2014.

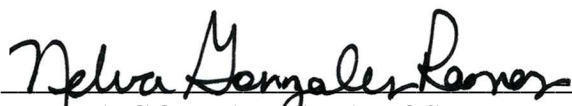
Plaintiff takes issue with the Magistrate Judge's application of the standard for determination of whether a pleading filed *in forma pauperis* under 28 U.S.C. § 1915(e)(2)(B) is frivolous. He advocates application of the standard of review set out in *Denton v. Hernandez*, 504 U.S. 25 (1992) and reiterates his claims. The *Denton* standard pre-dates amendments to 28 U.S.C. § 1915(e)(2)(B), as observed in *Walp v. Scott*, 115 F.3d 308 (5th Cir. 1997).

Plaintiff also seeks leave to amend his complaint prior to any dismissal so as to more narrowly focus his claims. D.E. 14. The Court GRANTS D.E. 14 and evaluates the Plaintiff's claims as stated in his amended complaint (D.E. 14-2). The Court finds that, while the F.B.I. may regularly use a "close tail" procedure, it is frivolous under standards of review of both *Denton* and § 1915(e)(2)(B) to suggest that they are utilizing that procedure against Plaintiff in the manner that Plaintiff alleges. Plaintiff's objections are **OVERRULED**.

The Court, however, determines that, pursuant to 28 U.S.C. § 1915(e)(2)(B) this action should be dismissed without prejudice such that Plaintiff may re-file his claims, should he desire to do so, upon full payment of all applicable filing fees.

Having reviewed the findings of fact, conclusions of law, and recommendations set forth in the Magistrate Judge's Memorandum and Recommendation, as well as Plaintiff's Objections, and all other relevant documents in the record, and having made a *de novo* disposition of the portions of the Magistrate Judge's Memorandum and Recommendation to which objections were specifically directed, the Court **OVERRULES** Plaintiff's Objections and **ADOPTS** as its own the findings and conclusions of the Magistrate Judge. Accordingly, Plaintiff's complaint (D.E. 1) is **DISMISSED WITHOUT PREJUDICE** and all pending motions are **DISMISSED**.

ORDERED this 17th day of March, 2014.


NELVA GONZALEZ RAMOS
UNITED STATES DISTRICT JUDGE